Nos. 87-1303 and 87-1310

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In The

Supreme Court of the United States

October Term, 1987

ALLEGHENY PITTSBURGH COAL COMPANY,

Petitioner,

v.

COUNTY COMMISSION OF WEBSTER COUNTY, WEST VIRGINIA,

Respondent.

EAST KENTUCKY ENERGY CORPORATION, et al.,

Petitioners,

v.

COUNTY COMMISSION OF WEBSTER COUNTY, WEST VIRGINIA,

Respondent.

On Writs of Certiorari to the Supreme Court of Appeals of West Virginia

BRIEF OF AMICI CURIAE, PACIFIC LEGAL FOUNDATION, PAUL GANN, AND CALIFORNIA TAX REDUCTION MOVEMENT, IN SUPPORT OF RESPONDENT

Of Counsel

TREVOR A. GRIMM
Kaplanis & Grimm
621 South Westmoreland Avenue
Suite 200
Los Angeles, CA 90005
Telephone: (213) 380-0303

Attorney for Amicus Curiae, California Tax Reduction Movement

RONALD A. ZUMBRUN
*ANTHONY T. CASO
*Counsel of Record
JONATHAN M. COUPAL
JEFFREY T. EVEN
Of Counsel
Pacific Legal Foundation
555 Capitol Mall, Suite 350
Sacramento, CA 95814
Telephone: (916) 444-0154

Attorneys for Amici Curiae, Pacific Legal Foundation, Paul Gann, and California Tax Reduction Movement

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INTEREST OF AMICI

Pursuant to Supreme Court Rule 36, Pacific Legal Foundation, Paul Gann, and California Tax Reduction Movement respectfully submit this brief amicus curiae in support of respondent. Consent to the filing of this brief has been granted by counsel for all parties. Copies of the letters of consent have been lodged with the Clerk of this Court.

Pacific Legal Foundation is a nonprofit, tax-exempt organization incorporated under the laws of California for the purpose of participating in litigation affecting public policy. Policy for the Foundation is set by a Board of Trustees composed of concerned citizens, the majority of whom are attorneys. The Board of Trustees evaluates the merits of any contemplated legal action and authorizes such legal action only where the Foundation's position has broad support within the general community. The Foundation's Board of Trustees has authorized the filing of an amicus curiae brief in this matter.

Pacific Legal Foundation has consistently supported the vigorous enforcement of tax reform measures, including California's Proposition 13. The Foundation has participated in most of the significant litigation regarding Proposition 13 since its enactment by California voters in 1978. This thorough knowledge of tax reform efforts allows the Foundation to present a unique public policy perspective to this Court.

Paul Gann is a California citizen and taxpayer. He is president of People's Advocate, Inc., an organization dedicated to the protection of taxpayers' interests. He is a coauthor of California's Proposition 13, an initiative

adopted by California voters in 1978 to reform that state's property tax system.

The California Tax Reduction Movement (CTRM) is a nonprofit, tax-exempt California corporation. It was organized in 1978 by the late Howard Jarvis, a coauthor of Proposition 13. CTRM was organized for the express purpose of defending the tax reduction benefits of Proposition 13. CTRM has some 200,000 members, who actively support its ongoing tax reduction efforts.

Amici's participation in this case stems from their support for California's Proposition 13. Amici support the discretion of the states to determine tax policy independently. This discretion must include the ability to adopt a property tax assessment system such as that contained in Proposition 13. Amici share respondents' concern for the freedom of the states to determine tax policy. The public policy concern and litigation experience brought to this case by amici will help provide this Court with additional arguments relevant to the proper resolution of this matter.

OPINION BELOW

The opinion of the Supreme Court of Appeals of West Virginia is reported as *In re 1975 Tax Assessment Against Oneida Coal Company*, 360 S.E.2d 560 (W. Va. 1987).

STATEMENT OF THE CASE

These consolidated cases concern the discretion of the states to determine their own policies independently

with regard to property taxation. These cases arise out of property tax challenges brought by several coal companies in West Virginia. In 1974 the Allegheny Pittsburgh Coal Company purchased 7,374 acres of coal property in fee simple, including surface, minerals, and various combinations of surface and mineral interests. Allegheny Pittsburgh paid a total of $24,624,500 for this property. Webster County, West Virginia, in which the property was located, assessed the property for the tax years 1976 to 1983 at $12,312,250, 50% of the purchase price.[1] *In re 1975 Tax Assessments Against Oneida Coal Company*, 360 S.E.2d at 562.

Allegheny Pittsburgh sold its property in Webster County to East Kentucky Energy Corporation for $29,842,500 on July 15, 1982. From that time on Webster County assessed the property at $14,921,250, 50% of the price for which East Kentucky Energy purchased the property. *Id.*

The other property at issue in these cases was owned successively by the Shamrock Coal Company and Oneida Coal Company. Both of these companies are subsidiaries of Elk River Resources, Inc. Shamrock transferred 7,783 acres of coal in Webster County to Oneida on May 12, 1981. No consideration changed hands because both companies were subsidiaries of the same parent. The assessed

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[1] The West Virginia Constitution requires that property be assessed for tax purposes at 60% of its full cash value. W. Va. Const. Art. X, § l(b). This constitutional provision was enacted in 1982. Prior to that time property was assessed at 50% of value pursuant to West Virginia Code § 18-9A-11(f).

valuation of this property was derived from the price paid when Shamrock purchased the property in 1977. *Id.*

By regular practice Webster County automatically reassessed any property transferred based on its market value at the time of transfer. Other property in the county was reassessed by raising assessed valuation by 10% once every four to six years. *Id.* at 563.

The coal companies argued below that the practice of reassessing property transferred, based on market value at the time of transfer without also reassessing other similar property, violates the West Virginia Constitution and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Without discussing the federal claim, the Supreme Court of Appeals of West Virginia concluded that "the consideration paid by the appellees represents 'the true and actual value' of their respective properties . . . ." *Id.* at 564. The court therefore rejected the coal companies' claims.

The coal companies petitioned this Court for writs of certiorari. The petitions were granted on March 28, 1988, and consolidated for review. The coal companies now argue that anytime a state adopts a system by which property is reassessed on transfer, without also reassessing other comparable property, equal protection is violated. Amici contend that this argument is overbroad and would operate to nullify property tax systems proven to protect home owners from large yearly increases in their tax burdens based on increased "paper" value.

SUMMARY OF ARGUMENT

This Court has long acknowledged the wide discretion of the states to determine independently the policies underlying their systems of property taxation. States may adopt many different policy goals in establishing a property tax system. The Fourteenth Amendment to the United States Constitution does not establish an absolute rule that all comparable property must be taxed equally. States may adopt goals other than taxation based on current value. For example, California has determined that unrealized paper increases in the value of property should not be taxed and, therefore, has adopted a policy of reassessing property only when transferred, newly constructed, or, in a limited way, for inflation.

Amici take no position with respect to the policies underlying Webster County's tax assessment practices. Amici's sole concern is that the coal companies' arguments be rejected to the extent that those arguments would impinge upon the ability of the states to set forth reasonable taxation policies, such as those embodied in California's Proposition 13. Equal protection does not demand an iron rule of equal taxation. Distinctions created between different classes of property owners, so long as allowed by state law, must be upheld if rationally related to a legitimate state policy objective.

ARGUMENT

I

THE STATES MAY EXERCISE WIDE DISCRETION IN SETTING THEIR OWN POLICIES REGARDING PROPERTY TAXATION

These consolidated cases represent a challenge by four coal companies to the system of property tax assessment employed by Webster County, West Virginia. The coal companies argue that Webster County's system of reassessing property when transferred, without also reassessing other comparable property, violates their right to equal protection of the laws under the Fourteenth Amendment to the United States Constitution. Amici will demonstrate that this argument is overbroad and neglects the possibility that the states have a legitimate policy reason for their particular tax systems.

Decisions of this Court over the past century make unmistakably clear that states have broad discretion in setting their own tax policies. Differences in treatment between taxpayers do not violate equal protection where those differences result from a reasonable distinction in state policy. *Kahn v. Shevin*, 416 U.S. 351, 355 (1974).

Amici do not address the policies underlying property tax assessment in Webster County.[2] The argument of

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[2] The coal companies concede that the states may create classifications among different types of property. Joint Brief for Petitioners at 23-24. Amici concur. The extent of the states' policy making discretion merits elaboration. As amici will demonstrate, the states may adopt systems of taxation based on policies other than equal taxation based on current market value. The states are free to adopt wholly unique concepts of what a property tax system should entail. *See Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal. 3d 208, 235, 149 Cal. Rptr. 239 (1978).

the coal companies must nevertheless be rejected to the extent that it purports to find in the Fourteenth Amendment a limitation on the discretion of the states to set policies that draw reasonable distinctions between taxpayers, so long as those distinctions are consistent with the state's constitution.

The decision of this Court in *Kahn* strongly supported this analysis when it concluded that "[a] state tax law is not arbitrary although it 'discriminate[s] in favor of a certain class . . . if the discrimination is founded upon a reasonable distinction, or difference in state policy,' not in conflict with the Federal Constitution. This principle has weathered nearly a century of Supreme Court adjudication . . . ." *Id.* (citations omitted; footnote omitted). That case involved a Florida property tax exemption for widows only. The exemption was not allowed for widowers, and a man whose wife had died challenged this distinction on equal protection grounds. *Id.* at 352. The Court found that the different treatment of widows and widowers " ' "rest[ed] upon some ground of difference having a fair and substantial relation to the object of the legislation." ' " *Id.* at 355 (citations omitted).

This analysis can be traced back at least as far as *Bell's Gap Railroad Company v. Commonwealth of Pennsylvania,* 134 U.S. 232 (1890). The Court there concluded that "the XIVth Amendment was not intended to compel the States to adopt an iron rule of equal taxation." *Id.* at 237. The states may adopt distinctions between parcels of property of similar value, "so long as they proceed within reasonable limits and general usage, are within the discretion of the State Legislature, or the people of the State in framing their Constitution." *Id.*

States may wish to create distinctions in their property tax systems for a wide variety of policy reasons. In 1978 California voters enacted Proposition 13, an initiative measure that added Article XIIIA to the California Constitution. Among other things, Proposition 13 provided that property would be assessed at its 1975-1976 value, and reassessed later only when transferred, newly constructed, or, in a limited manner, for inflation.[3] Cal. Const. Art. XIIIA, § 2. Although this system results in some property being assessed at different values from other property of the same current market value, it is clearly supported by a rational public policy choice.

This system results from a decision that property taxes should be firmly grounded in the original cost of the property, and should not tax unrealized paper gains in the value of the property. *Amador Valley Joint Union High School District v. State Board of Equalization,* 22 Cal. 3d at 235. As the California Supreme Court explained, reassessing property only on transfer may advance a policy of predicating taxes on the owner's free and voluntary act of purchase. *Id.* Taxpayers are treated equally because each is taxed based on the price they willingly pay for property, and none are taxed on mere paper increases in value after that time.

> "Not only does an acquisition value system enable each property owner to estimate with some assurance his future tax liability, but also the system may operate *on a fairer basis than a current value approach.* For example, a taxpayer who acquired his property

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[3] Proposition 13 allows county assessors to reassess property for inflation not to exceed 2% per year. Cal. Const. Art. XIIIA, § 2(b).

> for $40,000 in 1975 henceforth will be assessed and taxed on the basis of that cost . . . . This result is fair and equitable in that his future taxes may be said reasonably to reflect the price he was originally willing and able to pay for his property, rather than an inflated value fixed, after acquisition, in part on the basis of sales to third parties over which sales he can exercise no control. On the other hand, a person who paid $80,000 for similar property in 1977 is henceforth assessed and taxed at a higher level which reflects, again, the price he was willing and able to pay for that property." *Id.* (emphasis added).

California has adopted a system that limits the year by year tax increases on property. Cal. Const. Art. XIIIA, § 2. This state policy prevents a property owner from being confronted with rapidly increasing property taxes as a result of an increase in market value that is of no benefit to the property owner until time of sale. California declines to tax the potential gain that might result if property were sold.

Relying on this policy basis for the differences in assessments, the California court upheld Proposition 13 from an equal protection challenge. The wide flexibility permitted the states in adopting tax policies dictated that the court uphold a system supported by a rational basis. *Amador*, 22 Cal. 3d at 234. Absolute adhesion to current value is not the only policy objective a state may pursue.

Properties of the same current market value may also be taxed differently for other reasons. For example, a state may decide to tax property differently based on the use of the land. *Howell v. Malone*, 388 So. 2d 908, 913 (Ala. 1980). A policy of preserving agricultural and forest land from development justifies assessing such property at a lower rate than other property of the same current

market value. *Weissinger v. White*, 733 F.2d 802, 806-07 (11th Cir. 1984). Many states have a policy of taxing farmland at a lower rate in order to encourage the preservation of agricultural uses.[4]

States may tax different properties in different ways, where the distinction is rationally related to a legitimate state policy.[5] *State Board of Tax Commissioners of the State of Indiana v. Jackson*, 283 U.S. 527, 536 (1931).

> "The power of taxation is fundamental to the very existence of the government of the states. The restriction that it shall not be so exercised as to deny to any the equal protection of the laws does not compel the adoption of an iron rule of equal taxation . . . . The fact that a statute discriminates in favor of a certain class does not make it arbitrary, if the discrimination is founded upon a reasonable distinction, or if any state of facts reasonably can be conceived to sustain it." *Id.* at 537 (citations omitted).

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[4] Differing approaches to this policy include those of California, which allows property owners and local governments to enter into contracts by which land is restricted to agricultural uses in return for a lower tax assessment, California Government Code § 51200, *et seq.*, and Montana, which provides that the value of agricultural land shall be determined only with regard to its value for agricultural uses, and not based on its potential for development. Mont. Code Ann. § 15-7-201, *et seq.* (1987).

[5] The states' discretion is limited by the options available under its own state constitution. Obviously, if a policy is prohibited by the state constitution, it is not a legitimate state interest for purposes of the rational basis test.

Taxation is "the most plenary of sovereign powers." *Lawrence v. State Tax Commission*, 286 U.S. 276, 279 (1932). The states' discretion is wide indeed. For example, in 1970 Illinois abolished all ad valorem personal property taxes as to individuals, but retained those taxes as to corporations. *Lehnhausen v. Lake Shore Auto Parts Company*, 410 U.S. 356, 357 (1973). Lake Shore Auto Parts Company, a corporation, claimed the distinction violated its equal protection rights. *Id.* at 357-58. The Supreme Court concluded that a tax system will be upheld unless "palpably arbitrary" or "invidious." *Id.* at 360. The Court reasoned that "[t]he Equal Protection Clause does not mean that a State may not draw lines that treat one class of individuals or entities differently from the others. The test is whether the difference in treatment is an invidious discrimination . . . ." *Id.* at 359 (citations omitted). Furthermore, "[t]here is a presumption of constitutionality which can be overcome 'only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes.' . . . 'The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it.' " *Id.* at 364 (citations omitted).

Amicus, National Taxpayers Union (NTU), appears to believe that the states' discretion in setting tax policy is limited to considerations directly related to revenue collection and expenditure. Brief of amicus curiae, National Taxpayers Union, at 10-11. NTU criticizes California's Proposition 13 on this ground, but it is clear that Proposition 13 directly addresses the legitimate concern that taxation based on the rapidly increasing paper value of

property can cause extreme hardship on those whose incomes do not rise as rapidly as real estate values.

More importantly, no such subject matter limitation restricts the policies the states may pursue through the mechanism of tax statutes. NTU appears to believe that the states may not pursue policies through their tax systems unless those policies relate specifically to the benefits and burdens imposed by the tax system. State and federal governments use tax statutes to further a wide variety of policy concerns. Many income tax deductions are policy statements intended to advance various social goals through the tax system.[6] Beneficial property tax treatment of agricultural land advances a policy of preserving agricultural uses, without relation to specific benefits and burdens on the tax system. *Weissinger*, 733 F.2d at 806-07. A classification may not amount to "hostile and oppressive discrimination," *Lehnhausen*, 410 U.S. at 359, but that does not mean the classification may not serve a policy goal not strictly related to tax collection. Tax legislation may have as its object the advancement of social policy independent of the relative burdens taxpayers may place on the taxing entity. *Bob Jones University v. United States*, 461 U.S. 574, 591 (1983) (upholding policy of allowing an income tax exemption only for educational institutions that do not discriminate based on race).

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[6] Examples include promoting home ownership through mortgage interest deductions, 26 U.S.C. § 163(h), and encouragement of employers to build child care facilities for employees by providing special amortization rules. 26 U.S.C. § 188.

NTU's main objection to Proposition 13, and therefore its reason for involvement in this case, is that it does not agree with the policy choice made by California voters in enacting the initiative. The remedy for a disagreement over policy is to pursue democratic change. Such disagreement has nothing to do with the discretion of the states to make the policy in the first place.

The mere fact that Webster County's assessment practices result in unequal assessments depending on when the property was transferred, without more, does not establish an equal protection violation. Equal protection does not *confine* the states to a system of taxation based on current value. *Amador*, 22 Cal. 3d at 235. States may decide that property owners should not be taxed on unrealized paper gains in the value of their property, and so reassess property only on transfer, as California did by adopting Proposition 13. So long as the assessment system is rationally related to a legitimate state interest, equal protection is not violated.

II

CASES IN WHICH STATES HAVE ADOPTED POLICIES OF TAXING PROPERTY BASED ON CURRENT VALUE DO NOT LIMIT THE DISCRETION OF THE STATES TO PURSUE OTHER POLICIES

The coal companies rely heavily on two decisions of this Court for the proposition that any property tax assessment system that results in similar property being taxed differently violates the Fourteenth Amendment. In *Sioux City Bridge Company v. Dakota County*, 260 U.S. 441 (1923), the Supreme Court considered an equal protection challenge regarding the assessment of a railroad bridge in

Nebraska. The owner had alleged that the bridge had been assessed at its full value while other properties had been assessed at only 50% of market value. Nebraska law created a right to equal taxation based on current market value of the property. *Id.* at 444. While this Court held in favor of the bridge owners, *id.* at 445, the decision did not confine the states to a system of rigidly equal taxation without regard for the policy prerogatives of the states. That decision involved Nebraska constitutional and statutory provisions mandating taxation based on current value. *Id.* at 444.

Sioux City Bridge did not deal with the question of whether equal protection had been violated, but rather with the proper remedy for any violation that may be proved. This Court made no ruling as to whether an equal protection violation had occurred. *Id.* at 447. As the Court stated, "[t]he [Nebraska] supreme court does not make it clear whether it thinks the discrimination charged was proved or not, but, *assuming the discrimination*, it holds that the Bridge Company has no remedy except 'to have the property assessed, below its true value raised, rather than to have property assessed at its true value reduced.' " *Id.* at 445-46 (emphasis added). The Court then went on to discuss at length whether the property taxed at its true value should have its assessments reduced or the property assessed at below its value should have its tax levy raised. *Id.* This question differs markedly from whether equal protection had been violated in the first place.

The coal companies also rely heavily on *Cumberland Coal Company v. Board of Revision of Tax Assessments*, 284 U.S. 23 (1931). That case involved coal land that was

automatically assessed at the same value per acre regardless of how close the coal was to the river which provided its transportation to market. The value of the coal land in fact varied greatly depending upon its accessibility to the river. *Id.* at 24-26. This Court's decision that this practice violated equal protection did not limit the discretion of the states to set tax policy. The assessment practice at issue in *Cumberland Coal* did not relate to any policy adopted by the state. The coal land was assessed at a uniform value apparently as a matter of administrative convenience, rather than in pursuit of any substantive policy. *See id.* at 26.

The state court decisions relied upon by the coal companies in their opening brief also do not establish an absolute rule that states cannot adopt a policy supporting reassessment on transfer. Rather, they involve state law guarantees of equal taxation without regard for when the last transfer of the property took place. *Ernest W. Hahn, Inc. v. County Assessor*, 92 N.M. 609, 592 P.2d 965, 967 (1978). The same is true of *Sparks v. McCluskey*, 84 Ariz. 283, 327 P.2d 295 (1958), in which the decision on an earlier appeal made clear that the state constitution mandated equal taxation based on current value, foreclosing other policy objectives.[7] *McCluskey v. Sparks*, 80 Ariz. 15, 291 P.2d 791, 793 (1955).

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[7] The state court decisions cited by the coal companies in their petitions for certiorari also involved state constitutional provisions restricting taxation to a current value basis. *Rocky Mountain Oil and Gas Association v. State Board of Equalization*, 749 P.2d 221, 223-24 (Wyo. 1987); *Boothe Financial Corporation v. Lindley*, 6 Ohio St. 3d 247, 452 N.E.2d 1295, 1297 (1983); *State ex rel. Douglas v. State Board of Equalization*, 205 Neb. 130, 286 N.W.2d 729, 731 (1979); *Board of Assessors of* (continued)

As the California Supreme Court has observed, such cases cannot "purport to confine the states to a current value system under equal protection principles or to state an exception to the general rule . . . that a tax classification or disparity of tax treatment will be sustained so long as it is founded upon some reasonable distinction or rational basis." *Amador*, 22 Cal. 3d at 235. The Ohio Supreme Court has stated that "the different treatment of similarly situated taxpayers does not violate equal protection as long as there is a rational basis for that treatment." *Boothe Financial Corporation v. Lindley*, 6 Ohio St. 3d 247, 452 N.E.2d 1295, 1298 (1983).

This Court has made abundantly clear the rule that equal protection allows the states to create distinctions in their tax policies where rationally supported by a legitimate state purpose. *Hooper v. Bernalillo County Assessor*, 472 U.S. 612, 618 (1985).

Prior cases clearly demonstrate that the coal companies have overstated the law of equal protection in asserting that all systems by which similar property is taxed differently must be unconstitutional. The states are free to adopt policies seeking to advance other goals than strict uniformity. *F. S. Royster Guano Company v. Commonweath of Virginia*, 253 U.S. 412, 415 (1920). As one state court has observed, the decisions of this Court regarding equal protection challenges to taxes may be neatly

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Weymouth v. Curtis, 375 Mass. 493, 378 N.E.2d 655, 658 (1978); *District of Columbia v. Green*, 310 A.2d 848, 855 (D.C. 1973); *Southern Bell Telephone and Telegraph Company v. County of Dade*, 275 So. 2d 4, 8 (Fla. 1973).

divided into two categories. *Rocky Mountain Oil and Gas Association v. State Board of Equalization*, 749 P.2d 221, 233 (Wyo. 1987). The first category includes those cases, such as *Lehnhausen* and *Allied Stores of Ohio v. Bowers*, 358 U.S. 522 (1959), in which the distinctions created by the state tax system were allowed by, or at least not prohibited by, state law. *Rocky Mountain Oil and Gas*, 749 P.2d at 233. The second category includes those cases, such as *Sioux City Bridge* and *Cumberland Coal* in which state law created an entitlement to equal taxation. *Rocky Mountain Oil and Gas*, 749 P.2d at 234. Those cases in the first category upheld distinctions rationally related to legitimate state policies. *See, e.g., Lehnhausen*, 410 U.S. at 359. Equal protection has barred distinctions between property of comparable value only where unsupported by any public policy goal and where contrary to a right of equal taxation embodied in state law. *See, e.g., Sioux City Bridge*, 260 U.S. at 444-45.

CONCLUSION

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution affords states great discretion in setting state tax policy. The states are not confined to a rigid rule of equal taxation. The states may, unless prohibited by their state constitutions, adopt policies that pursue goals other than rigid equality of taxation.

The coal companies assert that any system by which property is reassessed on transfer without also reassessing other comparable property violates equal protection. This argument must be rejected to the extent that it

restricts the freedom of the states to adopt their own tax policies. The states are free to adopt policies that pursue other goals. An example of such a goal is California's Proposition 13, which declines to tax unrealized paper increases in the value of real property. Preservation of the vital discretion of the states to adopt their own tax policies demands that this Court recognize the ability of the states to pursue unique policy goals. The states need not march in lockstep uniformity behind the banner of current value. This Court should therefore reject the coal companies' contention that reassessment of property on transfer, without reassessing other comparable property, must violate equal protection.

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Respectfully submitted,

Of Counsel

TREVOR A. GRIMM
Kaplanis & Grimm
621 South Westmoreland Avenue
Suite 200
Los Angeles, CA 90005
Telephone: (213) 380-0303

Attorney for Amicus Curiae, California Tax Reduction Movement

RONALD A. ZUMBRUN
*ANTHONY T. CASO
*Counsel of Record
JONATHAN M. COUPAL
JEFFREY T. EVEN
Of Counsel
Pacific Legal Foundation
555 Capitol Mall, Suite 350
Sacramento, CA 95814
Telephone: (916) 444-0154

Attorneys for Amici Curiae, Pacific Legal Foundation, Paul Gann, and California Tax Reduction Movement